REMARKS

Claims 1-15 and 20-34 are pending in the application.

Claims 1-14 and 20-32 have been rejected.

Claims 15 and 33 have been objected to.

No claims have been amended and reconsideration of the claims is respectfully requested.

I. ALLOWABILITY OF CLAIMS 15 AND 33

Applicant thanks the Examiner for the indication that Claims 15 and 33 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. However, at this time, Applicant elects not to rewrite these claims in view of the arguments and remarks below.

II. REJECTION UNDER 35 U.S.C. § 103

Claims 1 and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and further in view of Widegren (US Patent No. 6,374,112).

Claim 2 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and Thorson (US Patent No. 4,440,986).

Claims 3, 6-8, 21 and 24-26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and further in view of Yamato (US Patent No. 5,694,390).

Claims 4-5 and 22-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and further in view of Campbell (US Patent 2003/0140159).

Claims 9-13 and 27-31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and Yamato (US Patent No. 5,694,390) in further view of Geagan III (US Patent No. 6,263,371).

Claims 14 and 32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and Yamato (US Patent No. 5,694,390) and Geagan (US Patent No. 6,263,371) and in further view of Thorson (US Patent No. 4,440,98).

The Office Action did not address Claim 34 and, therefore, Applicant assumes that this claims is allowable. If this is incorrect, Applicant respectfully requests the Examiner properly detail any such rejection in the next office action.

These rejections are respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the

references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142. In making a rejection, the examiner is expected to make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), *viz.*, (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; and (3) the level of ordinary skill in the art. In addition to these factual determinations, the examiner must also provide "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (*In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir 2006) (cited with approval in *KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007)).

The Office Action argues that Constantin discloses "maintaining a QOS" by measuring a parameter (delay) and optimizing the network bandwidth when the parameter is lower than a threshold. Applicant respectfully submits that the Office Action appears to confuse Constantin's method – establishing or not establishing a specific individual connection between two points if the delays occasioned by the network resources along a given path fall below a threshold (if the delay budget cannot be achieved, then no connection is made) – with Applicant's method of adapting a PBX network to maintain a QOS level in the network. These are two different concepts. Applicant's independent Claims 1, 2 and 20 recite enabling (an optimization mechanism or enabling device) optimization or adjusting of the network's bandwidth (the bandwidth of the PBX network itself) by reducing the size of voice packets traversing the PBX network.

As previuosly noted, Constantin allocates resources along a path through a network in response to a connection request message. Constantin, Abstract. In general terms, using cell delay calculations, if each successive resource element in the prospective path meets the delay budget, that resource element and path are utilized for the connection; if not, other paths are explored. See

Constantin, generally. Thus, Constantin teaches, generally, determining and finding a path through a plurality of resource elements that meets the required delay budget. The Office Action argues that Constantin describes "enabling optimization of the network bandwidth when the measure parameter differs from a predetermined value", citing Figure 4, step 114, Col. 6, line 63 through Col. 7, line 11. Again, as noted before for ease of reference, the cited text is set forth in its entirety below:

> At step 114, the network element allocates resources for the virtual connection associated with the connection request message received at step 100. The amount of resources allocated at step 114 is at least sufficient to process data units on the connection without exceeding the delay budget calculated at step 112. The amount of resources necessary to stay within the delay budget may be calculated using conventional techniques. If insufficient resources are available in the network element to process data units within the delay budget, the network element sends a message back to the network element from which it received the connection request message. That network element then will attempt to form the requested connection using a prospective path which does not include the network element having insufficient resources. Under such conditions, step 116 would not be performed.

Constantin does not "enable optimization of the network bandwidth" as that term is utilized and described in Applicant's specification. Constantin simply allocates the resource elements along the desired path in order to stay within the delay budget. Col. 7, lines 1-3. If the delay budget cannot be met, the connection request is not forwarded -- no connection is made. Constantin does not describe or disclose enabling optimization of the network bandwidth -- but merely allocates the resources if the connection can be made within the delay budget. Therefore, Constantin does not disclose or describe the enabling or adjusting the bandwidth of the PBX network as recited the independent Claims.

For these reasons, any proposed combination based on Constantin fails to render obvious independent Claims 1, 2 and 20.

The Daniel reference is cited as disclosing a PBX used in a packet network. Though Daniel generally discloses a PBX, there is no teaching or suggestion to combine Daniel into Constantin (or vice versa) or any rational underpinning to support the legal conclusion of obviousness. The Office Action merely identifies a reference disclosing a PBX network, and that it would be obvious to have

a PBX in the invention of Constantin in order to provide packet connectivity among telephone users. Since Constantin does not enable optimization or adjustment of the bandwidth of a PBX network, the proposed combination does not cure the noted deficiency of Constantin. There is no reasonable or rational basis to conclude that a PBX network of Daniel, even if combined with Constantin, is one in which the bandwidth of the PBX network is (or can be) optimized or adjusted - as recited in Applicant's claims.

For this reason, this proposed combination fails to render obvious independent Claims 1, 2 and 20.

Turning now to Widegren, and as previously noted, the Office Action next argues that Widegren discloses adapting frame size of packets to meet a target QOS (delay), and that increasing or decreasing size of a packet changes the path delay of the packet, citing Col. 15, lines 2-9. Office Action, page 3. Widegren is directed to radio access and resource allocation in a specific mobile telephone system. Widegren, Absract. Widegren merely discloses that the segmentation/reassembly block 244 is used "to adapt the data streams to the appropriate frame size used over the radio interface." Widegren, Col. 15, lines 5-9. This appears to describe processing of a data stream into frame sizes specified by the radio (wireless) interfaces (e.g. UMTS) – which seems conventional. The cited portion of Widegren simply does not describe or teach that increase/decrease the size of packets to achieve a target QOS, nor is it directed to a PBX network.

For this reason, the proposed combination fail to render obvious independent Claims 1 and 20.

Accordingly, the Applicant respectfully requests withdrawal of all § 103 rejections of independent Claims 1, 2 and 20, and their dependent Claims 3-15 and 21-33.

III. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at ***rmccutcheon@munckbutrus.com***.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Munck Butrus Deposit Account No. 50-0208.

Respectfully submitted,

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